

1-1 By: Zaffirini, Perry S.B. No. 31  
 1-2 (In the Senate - Filed November 14, 2016; January 24, 2017,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 March 14, 2017, reported favorably by the following vote: Yeas 6,  
 1-5 Nays 3; March 14, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Huffman	X			
1-8 Hughes	X			
1-9 Birdwell		X		
1-10 Creighton		X		
1-11 Estes	X			
1-12 Lucio	X			
1-13 Nelson	X			
1-14 Schwertner		X		
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the use of a wireless communication device while  
 1-20 operating a motor vehicle; creating a criminal offense; modifying  
 1-21 existing criminal penalties.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. This Act may be cited as the Alex Brown Memorial  
 1-24 Act.

1-25 SECTION 2. Sections 521.161(b) and (c), Transportation  
 1-26 Code, are amended to read as follows:

1-27 (b) The examination must include:

1-28 (1) a test of the applicant's:

1-29 (A) vision;

1-30 (B) ability to identify and understand highway  
 1-31 signs in English that regulate, warn, or direct traffic;

1-32 (C) knowledge of the traffic laws of this state;

1-33 [~~and~~]

1-34 (D) knowledge of motorists' rights and  
 1-35 responsibilities in relation to bicyclists; and

1-36 (E) knowledge of the effect of using a wireless  
 1-37 communication device, or engaging in other actions that may  
 1-38 distract a driver, on the safe or effective operation of a motor  
 1-39 vehicle;

1-40 (2) a demonstration of the applicant's ability to  
 1-41 exercise ordinary and reasonable control in the operation of a  
 1-42 motor vehicle of the type that the applicant will be licensed to  
 1-43 operate; and

1-44 (3) any additional examination the department finds  
 1-45 necessary to determine the applicant's fitness to operate a motor  
 1-46 vehicle safely.

1-47 (c) The department shall give each applicant the option of  
 1-48 taking the parts of the examination under Subsections (b)(1)(B),  
 1-49 (C), [~~and~~] (D), and (E) in writing in addition to or instead of  
 1-50 through a mechanical, electronic, or other testing method. If the  
 1-51 applicant takes that part of the examination in writing in addition  
 1-52 to another testing method, the applicant is considered to have  
 1-53 passed that part of the examination if the applicant passes either  
 1-54 version of the examination. The department shall inform each  
 1-55 person taking the examination of the person's rights under this  
 1-56 subsection.

1-57 SECTION 3. Section 545.424, Transportation Code, is amended  
 1-58 by amending Subsections (a), (b), and (c) and adding Subsection (g)  
 1-59 to read as follows:

1-60 (a) A person under 18 years of age may not operate a motor  
 1-61 vehicle while using a wireless communication [~~communications~~]

2-1 device, except in case of emergency. This subsection does not apply  
2-2 to a person licensed by the Federal Communications Commission while  
2-3 operating a radio frequency device other than a wireless  
2-4 communication device.

2-5 (b) A person under 17 years of age who holds a restricted  
2-6 motorcycle license or moped license may not operate a motorcycle or  
2-7 moped while using a wireless communication [~~communications~~]  
2-8 device, except in case of emergency. This subsection does not apply  
2-9 to a person licensed by the Federal Communications Commission while  
2-10 operating a radio frequency device other than a wireless  
2-11 communication device.

2-12 (c) Subsection (a-1) [~~This section~~] does not apply to[+]  
2-13 [~~(1)~~] a person operating a motor vehicle while  
2-14 accompanied in the manner required by Section 521.222(d)(2) for the  
2-15 holder of an instruction permit[+, or

2-16 [~~(2)~~ a person licensed by the Federal Communications  
2-17 Commission to operate a wireless communication device or a radio  
2-18 frequency device].

2-19 (g) An offense under Subsection (a) or (b) is a misdemeanor  
2-20 punishable by a fine of at least \$25 and not more than \$99 unless it  
2-21 is shown on the trial of the offense that the defendant has been  
2-22 previously convicted at least one time of an offense under either  
2-23 subsection, in which event the offense is punishable by a fine of at  
2-24 least \$100 and not more than \$200.

2-25 SECTION 4. Section 545.425(a)(1), Transportation Code, is  
2-26 amended to read as follows:

2-27 (1) "Hands-free device" means speakerphone  
2-28 capability, [~~or~~] a telephone attachment, or another function or  
2-29 other piece of equipment, regardless of whether permanently  
2-30 installed in or on a wireless communication device or in a [~~the~~]  
2-31 motor vehicle, that allows use of the wireless communication device  
2-32 without use of either of the operator's hands, except to activate or  
2-33 deactivate a function of the wireless communication device or  
2-34 hands-free device. The term includes voice-operated technology and  
2-35 a push-to-talk function.

2-36 SECTION 5. Subchapter I, Chapter 545, Transportation Code,  
2-37 is amended by adding Section 545.4251 to read as follows:

2-38 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION  
2-39 DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

2-40 (1) "Electronic message" means data that is read from  
2-41 or entered into a wireless communication device for the purpose of  
2-42 communicating with another person.

2-43 (2) "Wireless communication device" has the meaning  
2-44 assigned by Section 545.425.

2-45 (b) An operator commits an offense if the operator uses a  
2-46 portable wireless communication device to read, write, or send an  
2-47 electronic message while operating a motor vehicle unless the  
2-48 vehicle is stopped.

2-49 (c) It is an affirmative defense to prosecution of an  
2-50 offense under this section that the operator used a portable  
2-51 wireless communication device:

2-52 (1) in conjunction with a hands-free device, as  
2-53 defined by Section 545.425;

2-54 (2) to report illegal activity or summon emergency  
2-55 help;

2-56 (3) to read an electronic message that the person  
2-57 reasonably believed concerned an emergency; or

2-58 (4) that was permanently or temporarily affixed to the  
2-59 vehicle to relay information in the course of the operator's  
2-60 occupational duties between the operator and:

2-61 (A) a dispatcher; or  
2-62 (B) a digital network or software application

2-63 service.

2-64 (d) Subsection (b) does not apply to:

2-65 (1) an operator of an authorized emergency or law  
2-66 enforcement vehicle using a portable wireless communication device  
2-67 while acting in an official capacity; or

2-68 (2) an operator who is licensed by the Federal  
2-69 Communications Commission while operating a radio frequency device

3-1 other than a portable wireless communication device.  
3-2 (e) An offense under this section is a misdemeanor  
3-3 punishable by a fine of at least \$25 and not more than \$99 unless it  
3-4 is shown on the trial of the offense that the defendant has been  
3-5 previously convicted at least one time of an offense under this  
3-6 section, in which event the offense is punishable by a fine of at  
3-7 least \$100 and not more than \$200.

3-8 (f) The Texas Department of Transportation shall post a sign  
3-9 at each point at which an interstate highway or United States  
3-10 highway enters this state that informs an operator that:

3-11 (1) the use of a portable wireless communication  
3-12 device for electronic messaging while operating a motor vehicle is  
3-13 prohibited in this state; and

3-14 (2) the operator is subject to a fine if the operator  
3-15 uses a portable wireless communication device for electronic  
3-16 messaging while operating a motor vehicle in this state.

3-17 (g) A peace officer who stops a motor vehicle for an alleged  
3-18 violation of this section may not take possession of or otherwise  
3-19 inspect a portable wireless communication device in the possession  
3-20 of the operator unless authorized by the Code of Criminal  
3-21 Procedure, the Penal Code, or other law.

3-22 SECTION 6. Section 708.052, Transportation Code, is amended  
3-23 by adding Subsection (e-1) to read as follows:

3-24 (e-1) Notwithstanding Subsection (b), the department may  
3-25 not assign points to a person's license if the offense of which the  
3-26 person was convicted is the offense of using a portable wireless  
3-27 communication device for electronic messaging as described by  
3-28 Section 545.4251.

3-29 SECTION 7. The changes in law made by this Act to Chapter  
3-30 545, Transportation Code, apply only to an offense committed on or  
3-31 after the effective date of this Act. An offense committed before  
3-32 the effective date of this Act is governed by the law in effect on  
3-33 the date the offense was committed, and the former law is continued  
3-34 in effect for that purpose. For purposes of this section, an  
3-35 offense was committed before the effective date of this Act if any  
3-36 element of the offense occurred before that date.

3-37 SECTION 8. This Act takes effect September 1, 2017.

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